

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

AND THE DELAWARE ENERGY OFFICE

IN THE MATTER OF INTEGRATED RESOURCE)
PLANNING FOR THE PROVISION OF)
STANDARD OFFER SUPPLY SERVICE BY)
DELMARVA POWER & LIGHT COMPANY UNDER)
26 DEL. C. § 1007(c) & (d): REVIEW) PSC DOCKET NO. 06-241
AND APPROVAL OF THE REQUEST FOR)
PROPOSALS FOR THE CONSTRUCTION OF)
NEW GENERATION RESOURCES UNDER)
26 DEL. C. § 1007(d))
(OPENED JULY 25, 2006))

ORDER NO. 7081

(AMENDING FINDINGS, OPINION, AND ORDER NO. 7066)

WHEREAS, on October 17, 2006, the Delaware Public Service Commission (the "Commission") and the Delaware Energy Office (the "Office") met to hear oral argument, consider comments from participants, and deliberate on the draft Request for Proposals ("RFP") submitted by Delmarva Power & Light Company and the Final Report (the "Final Report") prepared by the Independent Consultant retained on behalf of the Commission, the Office, the Controller General, and the Office of Management and Budget (together, the "State Agencies") under the process set forth in 26 Del. C. § 1007(d); and

WHEREAS, on October 17, 2006, the Commission and the Office made determinations as to all of the issues related to the terms of the final RFP and the ensuing bid process except the following: (1) the appropriate treatment of variable interest entities ("VIE"); (2) the appropriate amount of imputed debt; and (3) the appropriate amount of

default security to be maintained during the Operational Period,¹ which deliberations and determinations were reflected in writing in Findings, Opinion, and Order No. 7066 ("Order No. 7066"), executed on October 31, 2006; and

WHEREAS, the Commission and Office directed the parties to discuss the aforementioned three issues in an attempt to resolve their differences, and failing that, to come before the Commission and Office on October 31, 2006 for additional oral argument and deliberation; and

WHEREAS, the parties were unable to resolve their differences on these three issues; and

WHEREAS, at a meeting on October 31, 2006, the Commission and Office entered Order No. 7066 reflecting the determinations made on October 17, 2006; and

WHEREAS, at that same meeting, the interested parties appeared before the Commission and Office to present their arguments on the three remaining issues and the Commission and Office deliberated in open session on those issues; and

WHEREAS, at such meeting, the Commission and Office made determinations on the VIE and imputed debt issues as set forth in the Ordering paragraphs herein and also made a determination on the issue of the appropriate Operational Period Security consistent with paragraph 107 of Order No. 7066; and

¹Capitalized terms used herein and not defined shall have the same meaning as they have in Commission/Office Order No. 7066, issued on October 31, 2006.

WHEREAS, the Commission and Office now enter this Order to ensure that the final determinations set forth in Order No. 7066 (as now amended) encompass all the rulings and determinations that the Commission and Office have made in this process;

Now, therefore, **IT IS HEREBY ORDERED:**

1. That Paragraph 88 of Order No. 7066 (as entered on October 31, 2006) shall be deleted, and shall be replaced with the following:

88. We are very sensitive to DP&L's concern that it could conceivably be subject to VIE status as a result of a particular project, and that this status would be detrimental to both the Company and Delaware ratepayers. Therefore, we agree with DP&L that if its outside auditors determine, at the inception of a project, that that project will trigger VIE status for DP&L, DP&L may reject the bid proposal or terminate the contract. In our view, it makes no sense for DP&L to be disadvantaged by a particular project from its inception. With respect to changes occurring after the commencement of a contract that would trigger VIE status for DP&L, and would give DP&L the right to terminate the contract under its proposed RFP language, we are concerned about the effect on the contract party as well as on DP&L and on Delaware's customers. In the event that a project's structure changes or the accounting laws or principles are changed such that DP&L becomes subject to VIE status after the commencement of the contract, then DP&L may treat the change in the project's structure or the change in accounting laws or principles subjecting DP&L to VIE treatment as an event of termination. Should DP&L choose to treat the change in project structure or change in accounting laws or principles as an event of termination, it shall so notify the contract party and Commission immediately in writing. The contract party shall have thirty (30) days

from the date of the written notification to the contract party and the Commission to cure the problem leading to the trigger of VIE status or to appeal to the Commission. Should the contract party fail to cure the problem within the thirty (30) days, or should the contract party appeal to the Commission, the Commission will review DP&L's determination and make a decision as to whether it agrees with DP&L's determination within thirty (30) days of the end of the first thirty (30) day period. We believe this treatment best balances the concerns of a contract party that has invested money into performing under the contract with the concerns of DP&L and its ratepayers as to the potential damage to DP&L that would result from it being treated as a VIE. (Unanimous.)

2. That Paragraph 145 of Order No. 7066 (as entered on October 31, 2006) shall be deleted, and shall be replaced with the following:

145. We believe that the RFP should provide that DP&L will be permitted to assess the incremental equity amount to be equal to 30% of the net present value of the bid's capacity payment, and that a portion of the energy price may also be included if DP&L concludes that a portion of the bid's energy component would be imputed as debt by rating agencies in their assessment of DP&L's creditworthiness. Furthermore, DP&L (and the IC, if applicable) shall conduct sensitivity analyses at 0% and 50% debt imputation. We note that a 30% risk factor appears more apt than a 50% risk factor in light of the relevant EURSCA provisions regarding DP&L's ability to recover PPA costs in rates, and given DP&L's role as a distribution utility as opposed to a vertically integrated utility. (Unanimous.)

3. That Paragraph 107 of Order No. 7066 (as entered on October 31, 2006) is hereby confirmed as reflecting the further

determination made on October 31, 2006 as to the issue of the appropriate level of Operational Period Security.

4. That paragraph 66 of Order No. 7066 (as entered on October 31, 2006) is modified to correct the following typographical error on page 31, line 16: remove the numeral "5" that appears before "MWh" so that the sentence shall read: "One renewable energy credit is created for each MWh of energy produced by an eligible renewable energy facility."

5. That the Commission and the Office reserve jurisdiction and authority to enter such further Orders in this Docket as may be deemed necessary or appropriate.

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BY ORDER OF THE COMMISSION AND THE OFFICE:

DELAWARE ENERGY OFFICE

/s/ Philip J. Cherry
Philip J. Cherry,
Director of Policy & Planning
Department of Natural Resources &
Environmental Control

PUBLIC SERVICE COMMISSION

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary